

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HESTAL LIPSCOMB,)
)
Plaintiff,)
)
v.) Civil Action No.
) 05-477-SLR
ELECTRONIC DATA SYSTEMS)
CORPORATION,)
)
Defendant.)

Deposition of HESTAL LIPSCOMB taken pursuant to notice at the offices of Richards, Layton & Finger, One Rodney Square, Wilmington, Delaware, beginning at 10:00 a.m. on Tuesday, February 21, 2006, before Anne L. Adams, Registered Professional Reporter and Notary Public.

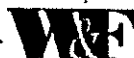
APPEARANCES:

LAURENCE V. CRONIN, ESQ.
SMITH, KATZENSTEIN & FURLOW
800 Delaware Avenue
Wilmington, Delaware 19899
for the Plaintiff,

THOMAS J. PIATAK, ESQ.
BAKER HOSTETLER
3200 National City Center
1900 East 9th Street
Cleveland, Ohio 44114-3485
for the Defendant.

ALSO PRESENT: Lance Rogers, EDS

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



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1 A. No.

2 Q. Do you know what their policy on absenteeism is
3 at the Delaware Psychiatric Institute?

4 A. Yes.

5 Q. And what is it?

6 A. You have a certain amount of days that you can be
7 out. I believe it's three days if you are sick. And
8 then after three days, you would have to have a note from
9 your doctor or you can put in for your sick time or use
10 vacation time depending on the situation.

11 Q. Now, do you know what the policy is if there is
12 an unexcused period of unexcused absence?

13 A. No, I don't.

14 Q. Do you know what their policy is on the Family
15 Medical Leave Act or FMLA?

16 A. I might have the policy. I did read through it.
17 I'm not exactly familiar because I have never had to
18 actually use it.

19 Q. Do you know what the policy would be if you are
20 out for three days or more and do not have a note from
21 your doctor?

22 A. Well, I know you get a verbal warning. Then you
23 would get a written warning and they would reprimand you.

24 Q. So being without a medical excuse can lead to



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1 discipline?

2 A. Yes.

3 Q. Has that been true for other places that you've
4 worked as well?

5 A. No, with the exception of EDS.

6 Q. Are you currently attending any form of school?

7 A. No, sir.

8 Q. Other than your work at the Delaware Psychiatric
9 Center, have you had any other employment of any kind
10 since you left EDS?

11 A. Yes, I have.

12 Q. Where else have you worked?

13 A. I have had temp assignments, two temp
14 assignments. One was for one week and that was at
15 Nationwide Insurance. Then I had another assignment.
16 And that lasted a month. And it was at Citigroup.

17 Q. What was the temporary agency?

18 A. One was, the first one was Careers. The second
19 one was Randstad.

20 Q. Rand --

21 A. R-A-D-S-T-A -- think it is Randstad.

22 MR. CRONIN: I think it's in our
23 interrogatory responses.

24 BY MR. PIATAK:



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1 MR. CRONIN: Yes, big, big part of our
2 economy. At least they have been. We will see what Bank
3 of America does.

4 BY MR. PIATAK:

5 Q. When did you start working at EDS?

6 A. That would have been July 29th of 2002.

7 Q. And was that after your assignment had ended at
8 AIG?

9 A. Yes.

10 Q. Were you unemployed at the time you applied at
11 EDS?

12 A. For about two weeks or so.

13 Q. And why did you accept employment at EDS?

14 A. I needed a job for one. And I was accepted as to
15 be an employee there and I qualified.

16 Q. So you went to EDS because you needed a job and
17 they were willing to take you on as a permanent position?

18 A. Yes.

19 Q. Any other reasons?

20 A. I was looking for a permanent position. I didn't
21 want to do temp for the rest of my life.

22 Q. Anything else that led you to go to EDS?

23 A. No.

24 Q. And who did you meet with before you started



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1 working at EDS? Who did you meet with from the company?

2 A. Barb Jackson interviewed me. And I spoke with
3 Nicky, who is the, I believe the administrative
4 secretary, she gave me instructions where to get my drug
5 test done and fingerprints and things of nature.

6 Q. Do you remember speaking to anyone besides Barb
7 and Nicky before coming to work at EDS?

8 A. No.

9 Q. Do you remember what you and Barb talked about?

10 A. During the interview?

11 Q. Yeah, during the interview.

12 A. No, I don't remember exact conversation.

13 Q. Was Barb the only person that you interviewed
14 with prior to being hired at EDS?

15 A. I can't recollect. I'm not sure. Tracy Eddy
16 might have come in while she was doing the interview.

17 Q. Anyone that you remember interviewing with before
18 starting at EDS other than Barb and possibly Tracy?

19 A. No.

20 Q. Did you turn down any job offer to come to EDS?

21 A. No.

22 Q. Hestel, during the time that you worked at EDS, I
23 want you to tell me about any complaints that you made
24 during that period of time about EDS or any of its



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1 employees.

2 A. I didn't have any complaints.

3 Q. What was your initial job when you were hired in
4 at EDS?

5 A. Specialized support clerk.

6 Q. And is that the position that you retained during
7 your whole time at EDS or did that change in any way?

8 A. No, that was it except for I was back-up for
9 Linda Jackson, who was the team leader, when she wasn't
10 there. I was like team leader for them when she wasn't
11 there.

12 Q. So the whole time you were at EDS your position
13 was specialized support clerk?

14 A. Yes.

15 Q. But after a certain point, you became a back-up
16 for Linda Jackson when she was out?

17 A. Yes. She would leave directives for me to pass
18 on for her or something like that.

19 Q. Do you remember when it was you started acting as
20 a back-up for Linda Jackson?

21 A. No.

22 Q. As a specialized support clerk, what were your
23 duties and responsibilities?

24 A. We processed the Medicaid claims, sorted and



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1 scanned, the monthly bulk mailing and daily stuffing and
2 mailing of benefit information.

3 Q. Any other duties or responsibilities that you
4 remember having?

5 A. Inventory, basically keeping the shelves stocked.

6 Q. Anything else?

7 A. Just sign for UPS packages, sort mail. I left
8 that out. And I would put postage on the mail when I
9 mailed them out after stuffing them. I would do the
10 monthly report for the meter machine, the stamping
11 machine and turn it in. That's about it. Answer the
12 phone.

13 Q. And were you working in the mailroom area
14 primarily?

15 A. Yes.

16 Q. And the EDS facility in Delaware, was it your
17 understanding that most of what it did was process
18 Medicaid claims?

19 A. Yes.

20 Q. And who was your supervisor?

21 A. Tracy Eddy.

22 Q. Was that true the whole time you were there?

23 A. Yes.

24 Q. What was your salary or compensation?



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1 A. To the best of my ability, I would say, yes, she
2 was.

3 Q. Was she fair?

4 A. Yes.

5 Q. Did you consider her to be a friend?

6 A. Yes.

7 Q. Did you have a good working relationship with
8 her?

9 A. Yes.

10 Q. Did you have a good working relationship with
11 Linda?

12 A. Yes.

13 Q. Barbara Jackson, you mentioned she interviewed
14 you before you came to EDS.

15 A. Yes.

16 Q. In your dealings with Barbara Jackson, was she
17 honest?

18 A. I would believe so.

19 Q. Was she fair?

20 A. Yes.

21 Q. Did you have a good working relationship with
22 her?

23 A. Yes.

24 Q. Lance Rogers, who's sitting next to me, did you



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1 ever have any dealings with him when you were an EDS
2 employee?

3 A. Yes, I did.

4 Q. In your dealings with Lance, was he honest?

5 A. Yes.

6 Q. Was he fair?

7 A. Yes.

8 Q. Did you have a good working relationship with
9 him?

10 A. Yes.

11 Q. Is there anyone at EDS with whom you did not have
12 a good working relationship?

13 A. No.

14 Q. Did you have discussion with either Tracy Eddy or
15 Linda Jackson concerning tardiness? Do you remember
16 that?

17 A. Yes.

18 Q. Who do you remember having that discussion with?
19 Was it Tracy or Linda or can't you remember?

20 A. I believe both of them mentioned it to me, said
21 something about when I was late like 20 minutes, said I
22 couldn't be late.

23 Q. So you had had some tardiness and they warned you
24 about the need to improve that?



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1 A. Yes.

2 (Lipscomb Deposition Exhibit No. B, EDS
3 Delaware Healthcare Services Account Handbook
4 Acknowledgment Form, was marked for identification.)

5 BY MR. PIATAK:

6 Q. Hestel, I handed you what's been marked Exhibit
7 B. It's an EDS Delaware Healthcare Services Account
8 Handbook Acknowledgment Form. Is that your handwriting?

9 A. Yes, it is.

10 Q. And you certified that you had received a copy of
11 the EDS Delaware Healthcare Services Account Handbook and
12 that you had read it and understood it?

13 A. Yes.

14 (Lipscomb Deposition Exhibit No. C,
15 Attendance Guidelines, was marked for identification.)

16 BY MR. PIATAK:

17 Q. Hestel, I have handed you what's been marked as
18 Exhibit C. This is from the EDS Delaware Healthcare
19 Services Account Handbook. If you could turn to the
20 section on Page 2 on absences, and you will see the first
21 sentence, "If an employee is absent for three or more
22 days consecutively due to medical reason, they may be
23 required to provide healthcare provider certification to
24 their manager upon returning to the workplace." Do you



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1 see that?

2 A. Yes.

3 Q. And you were familiar with that policy?

4 A. Yes.

5 Q. And it states further, "Healthcare provider's
6 certification may be required to validate any other
7 illness or time away from work due to medical reason if
8 deemed appropriate by EDS/USGS leadership." Do you see
9 that?

10 A. Yes.

11 Q. And you were familiar with that policy?

12 A. Yes.

13 Q. It says, "Excessive absenteeism may result in
14 disciplinary action up to and including separation from
15 EDS." Do you see that?

16 A. Yes.

17 Q. And you were familiar with that as well?

18 A. Yes.

19 Q. And on the previous page there is a note, "The
20 requirements of these guidelines exclude any qualifying
21 Family Medical Leave Act, FMLA, absences or other
22 protected leave." Do you see that?

23 A. Yes.

24 Q. And you knew that absences covered by the FMLA



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1 were considered excused absences?

2 A. Yes.

3 Q. And that unexcused absences could lead to
4 discipline?

5 A. Yes.

6 Q. Including termination?

7 A. Could you repeat that, please? I'm sorry.

8 Q. Sure. As I said, if I ask you questions you
9 don't understand or I mumble something, let me know.

10 And you knew that unexcused absences could
11 lead to discipline, including termination?

12 A. Yes.

13 Q. And you took some time off of work in August of
14 2003. Do you remember that?

15 A. Vacation?

16 Q. No, not vacation. I think it was health related.
17 Do you remember being off work for a time in August,
18 2003?

19 A. No.

20 MR. PIATAK: That's fine.

21 (Lipscomb Deposition Exhibit No. D, Letter
22 from Metlife Synchrony dated August 7, 2003, was marked
23 for identification.)

24 BY MR. PIATAK:



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1 A. Yes, I did.

2 Q. Who did you let know?

3 A. Tracy Eddy.

4 Q. And what did you tell Tracy in 2003?

5 A. That I had to go out for a surgical procedure.

6 Q. Did you tell her anything else?

7 A. No. I told her the day that the surgery would be
8 on.

9 Q. So you told her you had to go out for a surgical
10 procedure and the date of the surgery?

11 A. Yes.

12 Q. And you didn't tell her anything else about that?

13 A. No.

14 Q. And then what happened once you told Tracy that
15 you were going to be out for a surgical procedure and you
16 gave her the date?

17 A. She said she would take care of the FMLA papers
18 and she picked up the phone and made a phone call.

19 Q. And what did you understand her to mean when she
20 told you she would take care of the FMLA papers?

21 A. That she would take care of it.

22 Q. And you knew that your leave potentially was
23 covered by the family medical Leave Act, the FMLA?

24 A. Yes.



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1 Q. And you knew if your leave was covered by the
2 FMLA, it was counted as an excused absence under EDS's
3 policy?

4 A. Yes.

5 Q. And if it was not covered, it might be counted as
6 an unexcused absence?

7 A. Yes.

8 Q. And so do you remember talking to Tracy and her
9 saying she would take care of the FMLA paperwork? Did
10 you have your doctors submit any medical information in
11 connection with the time you were off in 2003?

12 A. To whom?

13 Q. To anybody, to EDS or to MetLife Synchrony?

14 A. I went out. I had the surgery. I was out two
15 weeks. And I went back for my checkup and they released
16 me back to work. I didn't have any paperwork or anything
17 that I had to submit to anyone or anything like that.

18 Q. And do you remember receiving a letter, this
19 letter from MetLife Synchrony?

20 A. No, I don't.

21 Q. There is a paragraph on there that's in bold
22 language, bold print. Do you see that?

23 A. Yes.

24 Q. "If your absence extends beyond August 18, 2003,



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1 you must provide clinical documentation of the medical
2 reasons for your continued absence and how they will
3 impact ability to return to work. Although we will
4 attempt to contact you and your physician, it is your
5 responsibility to ensure Synchrony is provided the
6 additional information which may include office notes,
7 laboratory data and other pertinent tests needed to
8 evaluate your condition and your functionality."

9 This letter is indicating that you might
10 have to provide medical information directly to
11 Synchrony; is that correct?

12 A. That's what you are reading.

13 Q. Had you received such a letter, how would you
14 respond?

15 A. I would have submitted it to my doctor so it
16 could be filled out and sent to the proper destination.

17 Q. And why would you do that?

18 A. Because it was sent to me.

19 Q. And because they were asking you to get them the
20 medical documentation?

21 A. If that's what it stated.

22 Q. And if someone acting on your employer's behalf
23 is asking you to provide medical documentation, you
24 understand that it's your job to get that medical



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1 documentation to them?

2 A. Yes.

3 Q. And as a responsible employee, you would take
4 care to do that, right?

5 A. If they requested it.

6 Q. You were also away from work at EDS for a time in
7 late April, early May of 2004, correct?

8 A. Say that again, please.

9 Q. Sure. You were also away from work for a time in
10 late April and early May of 2004, correct?

11 A. Yes, I was.

12 Q. And why did you take time off work then?

13 A. I had a medical procedure that needed to be taken
14 care of.

15 Q. And before you went out, did you tell anyone that
16 you would be missing from work?

17 A. Yes, I did.

18 Q. And who did you tell?

19 A. I spoke with Tracy Eddy.

20 Q. And what did you tell Tracy?

21 A. That I would have to go out to have a surgical
22 procedure done. She then, in turn, requested that I get
23 some type of document from the doctor stating which day I
24 was going out to have the procedure done. She also



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1 wanted it to state how long I was going to be out, but
2 that couldn't be done until after the procedure was done.

3 Q. So you told Tracy that you were going to be going
4 out on a surgical procedure?

5 A. Yes.

6 Q. Anything else you told her about that?

7 A. No.

8 Q. And she asked you for some documentation about
9 how long you were going to be out?

10 A. Yes.

11 Q. What else happened?

12 A. Nothing. I called the doctor and asked him could
13 they fax me a letter stating which day I was going to
14 have surgery and how long was I going to be out. They
15 said they were unable to put that part on there because
16 they would not know until after I had the procedure done.
17 They could only state what day the procedure was to be
18 done.

19 Q. And which doctor did you ask to fax this?

20 A. The doctor at Wilmington Hospital Surgical
21 Clinic.

22 Q. Do you remember the doctor's name?

23 A. I think it's Dr. Kratz.

24 Q. Dr. Kraut?



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1 time?

2 A. Yes, it is.

3 Q. And this letter also states, "If, for any reason,
4 your short-term disability or Workers' Compensation claim
5 is not approved, we will provide you with the
6 Certification of Healthcare Provider Statement to be
7 completed by you and the attending healthcare provider to
8 certify your leave under FMLA." Do you see that
9 language?

10 A. Yes, I do.

11 Q. "And a final determination will be based on the
12 medical information outlined by the attending healthcare
13 provider." Do you see that?

14 A. Yes.

15 Q. And as we discussed earlier, if received a
16 request for medical information, as a responsible
17 employee, you would take care to see to it that it was
18 fulfilled?

19 A. Yes.

20 (Lipscomb Deposition Exhibit No. H, Letter
21 from Cigna Group Insurance dated May 4, 2004, was marked
22 for identification.)

23 BY MR. PIATAK:

24 Q. Hestal, I've handed you what has been marked as



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1 that language?

2 A. Yes, I do.

3 Q. Again, as we've discussed, you understood that if
4 you were requested to provide medical information, it was
5 your responsibility to provide it, correct?

6 A. If it was requested of me, I did try to supply it
7 to Cigna.

8 Q. And you knew that was your responsibility to do
9 that?

10 A. When I found out it was my responsibility, that's
11 when I took the go ahead and called and tried to have it
12 faxed over to Cigna when Barbara Jackson came to me and
13 said that they didn't receive it.

14 Q. And you don't remember what, if any, action you
15 took with respect to this letter; is that correct?

16 A. No, I don't.

17 (Lipscomb Deposition Exhibit No. I, Fax from
18 Cigna Group Insurance dated May 7, 2004, was marked for
19 identification.)

20 BY MR. PIATAK:

21 Q. Hestel, I've handed you what's been marked as
22 Exhibit I. Are you familiar with this document?

23 A. Yes.

24 Q. And when was the first time that you saw it?



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1 A. When I went and obtained papers from my hospital,
2 I seen it was one of the papers that was faxed or faxed
3 to Cigna.

4 Q. Do you know who Dr. Emily Penman is?

5 A. No, I don't.

6 Q. Do you know who Charlene Crowder is?

7 A. No, I don't.

8 Q. Did you have any discussions with Charlene
9 Crowder?

10 A. No.

11 Q. Do you know whether Dr. Penman ever completed
12 this form and returned it to Cigna?

13 A. To the best of my knowledge, it was faxed over.
14 This was what they faxed when I called and asked them to
15 please fax the documentation to Cigna in regards to my
16 surgery.

17 Q. And that was after you had a discussion with
18 Barbara Jackson?

19 A. I didn't see the paper until after I was
20 terminated. I didn't never put my eyes on it filled or
21 blank until after I was terminated.

22 Q. So you never saw Exhibit I either in this form or
23 a completed form until after you had been terminated by
24 EDS?



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1 A. Yes.

2 Q. And at the time you were terminated by EDS, you
3 were not aware that this was ever filled out?

4 A. I had no knowledge of the paper because I had
5 never seen it.

6 Q. And you didn't know at that time that this had
7 been filled out?

8 A. No, I didn't know whether it was filled out or
9 not.

10 Q. Or sent to anyone at Cigna?

11 A. No, I didn't know.

12 Q. And at the time you had been terminated, you
13 weren't aware of any documentation having been sent to
14 Cigna; isn't that correct?

15 A. I wasn't aware of anything other than the fact
16 that Barbara Jackson said to me that it needed to be
17 done. And I called them and I did get a verification.
18 One of the nurses did call me and said it had been faxed
19 to Cigna. And that was the only thing. And that was
20 told to me over the phone.

21 Q. But at the time you were terminated, you weren't
22 aware of anything that, whether Cigna had actually
23 received anything, correct?

24 A. No, I wasn't aware if they received it or not.



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1 Q. And at the time you were terminated, you are not
2 aware of anyone at EDS who was aware of Cigna having
3 receiving information?

4 MR. CRONIN: Object to the form.

5 A. Not to my knowledge.

6 (Lipscomb Deposition Exhibit No. J, Letter
7 from Cigna Group Insurance dated May 20, 2004, was marked
8 for identification.)

9 BY MR. PIATAK:

10 Q. Hestel, I handed you what's been marked as
11 Exhibit J. This is a May 20th, 2004, letter from Cigna,
12 correct?

13 A. Yes, that's what it says.

14 Q. And it's addressed to the address that you had at
15 the time?

16 A. Yes.

17 Q. What action did you take as a result of this
18 letter?

19 A. I didn't receive this. This has pages that have
20 to be filled out on it. If I was to have received this,
21 I would have taken it to the proper destination and had
22 it filled out. I've never received this paper with
23 anything on it that had to be filled out by me or a
24 doctor.



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1 MR. CRONIN: Object to the form. You can
2 answer.

3 Q. What action, if any, did you take as a result of
4 this letter?

5 MR. CRONIN: Object to the form.

6 A. There wasn't any action taken, to my knowledge.
7 I don't recall receiving this letter.

8 Q. Okay. That's fine. Did you ever speak to anyone
9 at Cigna about your request for short-term disability or
10 FMLA leave in 2004?

11 A. No.

12 Q. And do you have facts or evidence showing that at
13 the time this letter was sent on June 2nd, Cigna had
14 received information regarding confirmation of the
15 surgical procedure you underwent, medical information
16 from Dr. Kraut to support your time off work, or your
17 signed authorization to release medical information and
18 proof of loss form?

19 MR. CRONIN: Object to the form.

20 A. Could you repeat the beginning of that one?

21 Q. Oh, sure.

22 A. You are saying -- I lost part of it.

23 Q. Of course, that's fine. Do you have any facts or
24 evidence showing that as of June 2nd, the date of



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1 Exhibit K, Cigna had, in fact, received confirmation of
2 the surgical procedure you underwent?

3 A. I didn't receive anything personal, personally,
4 faxed to me stating that they received it.

5 Q. Do you have any facts or evidence showing that as
6 of June the 2nd Cigna had received medical information
7 from Dr. Kraut supporting your time off of work?

8 A. No, not personally.

9 Q. Okay. And do you have any facts or evidence
10 showing that as of June the 2nd Cigna had received signed
11 authorization to release medical information and proof of
12 loss form?

13 A. No. The only thing that I had with anything in
14 regards to this is when Barbara Jackson spoke to me and
15 said something about them not receiving it and I
16 contacted the hospital. They in turn faxed -- said that
17 they faxed the information over to Cigna.

18 Q. Okay.

19 A. And that was the only thing that I know in
20 regards to anything being faxed to them.

21 Q. Okay. And do you remember who you spoke with at
22 the hospital?

23 A. Oh, it was a nurse in the surgical department. I
24 don't recall her name.



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1 your leave considered for FMLA protection, please submit
2 a Medical Certification within 15 days." Do you see that
3 language?

4 A. Yes.

5 Q. What action did you take as a result of this
6 letter?

7 A. I didn't take any action as a result of this
8 letter. I seen this letter after I was terminated.
9 There was no action to be taken then.

10 Q. Okay. Do you recall whether you received this
11 letter at the time?

12 A. Barbara Jackson showed it to me in the office on
13 the day of the termination. She showed me this letter.

14 Q. Okay. Do you recall whether you also received a
15 copy in the mail?

16 A. I did receive a copy, but it was after I was
17 terminated.

18 Q. You received a copy from whom after you were
19 terminated?

20 A. I would believe Cigna.

21 Q. Do you recall whether you also received a copy of
22 this letter in the mail in the June 2004 time frame?

23 A. No, sir.

24 Q. Is it possible that you received one and you just



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1 don't recall?

2 A. I don't recall receiving one in June. I did
3 receive the letter in July, but it was after I was
4 terminated.

5 Q. Did you return to work after your April 2004
6 surgery?

7 A. Yes, I did.

8 Q. When did you return to work?

9 A. I don't recall. I believe it was the 14th, 14th,
10 15th, something around there.

11 Q. Could it have been --

12 A. Of April.

13 Q. Of April or May?

14 A. I mean, I'm sorry, that was April -- wrong year.
15 It was May 17th when I returned.

16 Q. Of 2004?

17 A. And '4.

18 Q. Okay. Did you speak to anyone at EDS about your
19 absence from work when you returned?

20 A. No, I didn't. I spoke -- only thing I had did
21 was give my return to work slip to Tracey Eaddy.

22 Q. And other than giving that return to work slip to
23 Tracey, you didn't have any conversation with anyone at
24 EDS about your absence?



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1 A. No.

2 MR. PIATAK: Can we take a break just for a
3 moment.

4 (Recess taken.)

5 (Defendant's Exhibit M was marked for
6 identification.)

7 BY MR. PIATAK:

8 Q. Hestel, I've handed you what has been marked as
9 Exhibit M. Is that a copy of the note that you gave to
10 Tracey Eaddy?

11 A. Yes, it is.

12 Q. Is there any other document that you gave to
13 anyone at EDS after you returned to work concerning your
14 time off work other than Exhibit M?

15 A. No. Nothing was requested.

16 Q. That's fine. And you didn't give them anything
17 in addition to Exhibit M?

18 A. No.

19 Q. Did you have any discussions with Barbara Jackson
20 about your request for FMLA leave after you returned to
21 work?

22 A. No.

23 Q. Did you have any discussions with Barbara Jackson
24 concerning any aspect of your leave after you returned to



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1 work?

2 A. Aspect in which, which sense are you referring?

3 Q. Anything, did you have any discussions with
4 Barbara Jackson relating at all to your leave request
5 after your return?

6 A. Only when she came in and told me that they did
7 not receive the medical form.

8 Q. Okay.

9 A. That was the only time that I had any
10 conversation in regards to the medical leave.

11 Q. Okay. And so after you returned to work Barbara
12 Jackson came to you and told you that Cigna had not
13 received the medical information?

14 A. Yes.

15 Q. Do you remember approximately when that was?

16 A. It was about a month or month and a half after I
17 returned to work.

18 Q. How many times did Barbara Jackson discuss that
19 with you?

20 A. Twice.

21 Q. Let's take the first one. What happened the
22 first time?

23 A. I told her I would follow up with the clinic, and
24 I called them and told them that if it wasn't -- that



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1 Cigna didn't receive the fax, and she said that it was
2 sent and they were faxing it.

3 Q. And what had Barbara Jackson told you?

4 A. Initially, before I made the phone call?

5 Q. Correct.

6 A. She said that Cigna never received my papers.

7 Q. And did Barbara Jackson urge you to get the
8 medical documentation into Cigna?

9 A. She said that I needed to call to get -- to call
10 the hospital and get them to send the papers to Cigna.

11 Q. And didn't she tell you that your absences would
12 be considered unexcused if that documentation wasn't
13 received?

14 A. No, she didn't.

15 Q. But she did come and urge you to get that
16 documentation into Cigna?

17 A. Yes, she did. She said that it needed to be
18 gotten into Cigna, and I told her I would follow up and
19 do it. I made one phone call and then an additional
20 phone call when she came back and said that they still
21 didn't receive it.

22 Q. So tell me about the second time. What did she
23 tell you the second time?

24 A. She came and said that she got an e-mail, or



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1 something to that nature, that they still did not receive
2 the document.

3 Q. And was there anyone present besides you and
4 Barbara Jackson the first time you discussed this?

5 A. I don't recall.

6 Q. Was there anyone present the second time you
7 discussed this with Barbara Jackson besides you and her?

8 A. No, I don't think no one else.

9 Q. Okay. So Barbara Jackson came back and said
10 Cigna still had not received it?

11 A. Yes.

12 Q. Did she urge you to get the documentation in?

13 A. Yes.

14 Q. Did she offer to give you time off in order to do
15 this?

16 A. No.

17 Q. Did she offer to let you use one of the
18 conference rooms in order to do this?

19 A. Yes, she did say I could use the conference room.

20 Q. And she would let you use the conference room so
21 you could get the information yourself and fax it to
22 Cigna yourself, correct?

23 A. She said -- I never used the conference room,
24 though. I just called the head nurse in the surgery



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1 department. She in turn said that it was faxed and that
2 she -- no problem, she would re-fax it.

3 Q. Barbara Jackson told you, encouraged you to
4 personally get the information and send it to Cigna, and
5 she offered to let you use a conference room in
6 connection with that, correct?

7 A. She didn't say for me to personally get the
8 document myself and get it to Cigna. She said to get it
9 faxed over to Cigna.

10 Q. Did you have any other meetings or discussions
11 with Barbara Jackson regarding the documentation to
12 Cigna?

13 A. No, not after that, not until she called me on
14 Tuesday, July 13th, and her and Lance terminated me.

15 Q. You understood from your meetings with her that
16 she was urging you to get the documentation in with
17 Cigna?

18 A. Yes, I was aware of that, and I did follow up and
19 call the hospital, as I did twice, so the document could
20 be sent to Cigna and you.

21 Q. You understood from her visits to you that it was
22 important for you to send the documents to Cigna?

23 A. I understood the importance of it. That's why I
24 called the hospital to try and have them -- make sure



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1 they send the document to Cigna.

2 Q. Did anyone from EDS prevent you from submitting
3 that medical documentation to Cigna?

4 A. Excuse me?

5 Q. Did anyone from EDS do anything to prevent you
6 from submitting that medical documentation to Cigna?

7 A. No.

8 Q. Did anyone from EDS do anything to interfere with
9 your ability to submit that medical documentation to
10 Cigna?

11 A. No.

12 Q. And in fact, Miss Jackson offered to let you use
13 a conference room to facilitate your sending that medical
14 information to Cigna, correct?

15 A. Again, yes, she did.

16 Q. When were you terminated from EDS?

17 A. 4:30, July 13th, 2004.

18 Q. Do you know why you were terminated from EDS?

19 A. They stated that it was due to 14 day I guess no
20 show, no call.

21 Q. Any other reason you are aware of behind your
22 termination?

23 A. No.

24 Q. How did you find out you were being terminated?



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1 A. I was notified by Barb Jackson and Lance Rogers
2 when I was called into the office that afternoon.

3 Q. And whose office were you called into?

4 A. Barbara Jackson's.

5 Q. Was the meeting conducted in a businesslike and
6 professional manner?

7 MR. CRONIN: Object to the form. You can
8 answer.

9 A. We weren't sitting at a table as we are now. We
10 basically were standing up. She was standing up. Lance
11 was standing up, as well as I. And she said that I was
12 called in to be terminated.

13 Q. At that meeting did Lance or Barbara yell at you?

14 A. No.

15 Q. Did they raise their voices?

16 A. No.

17 Q. Did they behave professionally?

18 A. I would say so.

19 Q. What was said at the meeting?

20 A. Barb Jackson made me -- notified me that I was
21 being terminated. I asked her why, and she said it was
22 due to a 14-day no show or 14-day absent -- absence.

23 And I asked her when was I absent 14 days,
24 because I didn't put the days I was out for the medical



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1 leave in the place of these 14 days that she was
2 referring to, because I wasn't aware that, you know, that
3 was the actual reason.

4 So then she explained to me that I was being
5 terminated because Cigna never received the paperwork,
6 so, therefore, there was no proof that I had surgery or
7 anything like that, and the reason for my absenteeism.

8 Q. Anything else you remember being said at the
9 meeting?

10 A. I was told that there was other options on,
11 instead of me being terminated.

12 Q. And who told you that?

13 A. Lance Rogers.

14 Q. Anything else you remember being discussed at
15 that meeting?

16 A. No, not other than -- not other than I asked why,
17 I just asked why wasn't the -- why was termination the
18 option and the others weren't considered, and I wasn't
19 given an answer.

20 Q. Other than asking why EDS chose termination as
21 opposed to another option, did you make any other
22 comments in response to what Miss Jackson described to
23 you as the reason for your termination?

24 A. No, I didn't.



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1 Q. Do you remember telling her anything other than
2 basically why, asking why this is happening?

3 A. I basically just took it well. There was nothing
4 else I could do about it. I'm being terminated from a
5 position. There is no need to get, you know, crazy about
6 it. You are just terminated and just go ahead and leave.

7 The only -- I left the office and then I did
8 turn back, and I believe I met Lance in the hallway, and
9 I asked him, "Could I get something stating why I was
10 being terminated?"

11 Then I was escorted back to my office, where
12 I packed my things and I left.

13 Q. So you remember asking Barb Jackson what the 14
14 days absence she was referring to?

15 A. Yes.

16 Q. You remember asking why termination was the
17 option that was chosen, and you remember asking Lance on
18 your way out, again, why was termination chosen as the
19 option?

20 A. No, that's not what I said.

21 Q. What did you ask Lance?

22 A. What I said was, on the way back to my cubicle to
23 get my things, I turned around and I met Lance Rogers in
24 the hallway and I asked for something in writing stating



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1 why I was being terminated.

2 Q. Okay. Let me go back. Sorry for misremembering
3 that. At this meeting you asked what were the absences
4 that Barb Jackson referred to. You asked why termination
5 was being chosen as the option. And then on the way out
6 you asked Lance Rogers for something in writing regard
7 the termination?

8 A. Yes.

9 Q. And that's all that you remember saying at that
10 meeting in response to what Lance and Barb told you?

11 A. Yes.

12 Q. And then after you were told that you were
13 terminated, then what happened?

14 A. I was escorted back to my cube. I was given a
15 box, which I turned down and said, "I never brought
16 enough stuff in here that I would need a box for." And I
17 was leaving.

18 Tracey Eaddy tried to escort me out the back
19 door. I then in turn asked her, "Could I use the ladies'
20 room?" Which I would have to go out the front door for
21 that before I go and stand outside to get on the bus to
22 go home. And she did. She walked me to the front door.
23 I went to the rest room. And I left the building.

24 Q. Any other meetings or discussions with EDS people



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1 about your termination, the reason for your termination
2 that day that we haven't discussed?

3 A. I didn't speak with anybody at all. I haven't
4 actually spoke to anyone there.

5 Q. Okay. So we have discussed all of the
6 conversations you had with EDS personnel about your
7 termination or the reason for your termination?

8 A. Yes.

9 Q. Do you remember Lance Rogers asking you in the
10 meeting whether Barb Jackson had met with you and urged
11 you to get to Cigna the medical documentation?

12 A. Yes, he did ask me, did Barb Jackson -- yes, he
13 did ask me that.

14 Q. Do you remember confirming to Lance that Barb
15 Jackson had met with you and urged you to get the medical
16 documentation to Cigna?

17 A. Yes.

18 Q. Hadn't Barb met with you three times about that?

19 A. To my recollection, I only remember twice.

20 Q. If other people remember it was three times, is
21 it possible that that is what happened and you just don't
22 remember the third occasion?

23 MR. CRONIN: Object to the form.

24 A. It is a possibility.



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1 (Defendant's Exhibit N was marked for
2 identification.)

3 Q. Hestel, I've handed you what has been marked as
4 Exhibit N. Is this a document that you were referring to
5 that the nurse told you had been faxed to Cigna?

6 A. Yes, it is.

7 Q. Other than this, are you aware of any other
8 document that was faxed to Cigna?

9 A. No.

10 Q. I want you to take a look at what previously was
11 marked as Exhibit J in the earlier setting of your
12 deposition.

13 A. Okay.

14 Q. Attached to that there is a certification of
15 healthcare provider. I want you to let me know whether
16 what we have now marked as Exhibit N is the same as or
17 different from the Certification of Healthcare Provider.

18 A. They are two different forms.

19 Q. Okay. Hestel, do you have any facts or evidence
20 showing that you or anyone acting on your behalf ever
21 sent a completed Certification of Healthcare Provider to
22 Cigna?

23 MR. CRONIN: Object to the form.

24 A. The only forms that I know about are the ones



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1 that I actually went to the hospital, after I was
2 terminated, and went in my record to find out whether or
3 not -- and this is the form that was faxed, with a fax
4 cover sheet, stating it was faxed to Cigna.

5 Q. And that form is Exhibit M?

6 A. Yes, Exhibit M.

7 Q. You will see that Exhibit M says in bold print,
8 "Please send copies of all current test results and
9 office notes from April 2004 through the present." Do
10 you see that language?

11 A. Yes.

12 Q. Do you have any facts or evidence showing that
13 you or anyone acting on your behalf had sent to Cigna
14 copies of all current test results and office notes from
15 April 2004 through the present?

16 A. I only know what I was told by the hospital that
17 was sent.

18 Q. Okay. And what you were told by the hospital was
19 sent was what has been marked as Exhibit N?

20 A. Yes.

21 Q. And that's a one-page document?

22 A. Yes.

23 (Defendant's Exhibit O was marked for
24 identification.)



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1 A. Yes.

2 Q. Then the other page is a fax transmission sheet
3 stating at the top "Message Confirmation"?

4 A. Yes.

5 Q. Do you know what the document was, the one-page
6 document that accompanied this fax cover sheet marked as
7 Exhibit P?

8 A. It would be -- it would have been the, what is
9 your Exhibit N.

10 Q. Okay. And Exhibit N was not the Certification of
11 Healthcare Provider statement, correct?

12 A. Excuse me?

13 MR. CRONIN: Object.

14 Q. Exhibit N is not the same document as the
15 Certification of Healthcare Provider statement, correct?

16 MR. CRONIN: Object to the form.

17 A. Is that what you showed me in the other book?

18 Q. Yes.

19 A. No, it is not the same as that.

20 Q. And the message confirmation sheet refers, says
21 "Mary Beth's office" on it. Do you know what that refers
22 to?

23 A. No, I don't.

24 Q. At any point did you directly, yourself, send any



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1 A. Once.

2 Q. And you also took time off work for surgery in
3 2004 at EDS?

4 A. Yes.

5 Q. Was there anyone there who made any disparaging
6 comments about your taking time off for surgery on either
7 occasion?

8 A. No.

9 Q. Is there anyone at EDS who ever made any
10 disparaging comments about your health?

11 A. No.

12 Q. Are you aware that other EDS employees also took
13 time off for medical reasons while you worked there?

14 A. I have -- I believe there were people that took
15 off for whatever, various reasons. I wasn't really into
16 everyone's business, so I don't know who was out, for
17 what reason they were out.

18 Q. Are you aware of any employee at EDS being
19 terminated as a result of taking time off for medical
20 reasons?

21 A. No, I'm not aware of anyone.

22 Q. And you indicated Barb Jackson came to you twice
23 and urged you to get medical documentation into Cigna,
24 correct?



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1 Q. Right.

2 A. Do you mean after I was terminated or before I
3 was terminated?

4 Q. At any time?

5 A. Any time?

6 Q. At any point in time did you contact the post
7 office concerning problems receiving mail --

8 A. No, I didn't.

9 Q. Just for the record, let me finish my question
10 before you answer. Did you contact the post office
11 concerning problems receiving mail at any time at the
12 3111 West 2nd Street address?

13 A. No, I didn't.

14 Q. Did you contact anyone else at any time
15 concerning problems receiving mail at the 3111 West 2nd
16 Street address?

17 A. No, I didn't.

18 Q. Before you went out in 2003 did you participate
19 in a telephone call with Tracey Eaddy setting up an
20 account with the vendor to cover your leave?

21 A. In 2003?

22 Q. Yes.

23 A. Tracey set up the, whatever she did, the thing so
24 that I could go out and have the surgery then.



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1 Q. Okay. And Tracey was helpful in doing that?

2 A. Yes.

3 Q. Do you remember if you participated in that
4 telephone conversation?

5 A. No, I don't.

6 Q. Is it possible that you did and you just don't
7 remember?

8 A. That's possible. I don't remember making any
9 phone calls in regards to it.

10 Q. Okay. In 2004 when you went out, Tracey also set
11 up an account for your leave; is that correct?

12 A. Yes.

13 Q. Did you participate in a conference call or a
14 phone call to the vendor on that occasion?

15 A. No.

16 Q. Was Tracey helpful in that regard as well?

17 A. Yes.

18 Q. Generally speaking, did you find your
19 co-employees at EDS helpful in facilitating your seeking
20 medical treatment?

21 MR. CRONIN: Object to the form.

22 A. Yes.

23 Q. Hestel, after leaving EDS did you continue to
24 participate in the normal activities of daily life?



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Exhibit B

07-27-2005 Inquiry

Empl Status	TERM	- Term	07-14-2004
CAS Pyrl Ee Sts	T	- Terminated	07-13-2004
CAS Hr/Sal Cd	P	- Salary	04-01-2004
Hire Date	HIREDT	- Hire Date	07-29-2002
CAS LOA Reason	999	- None	05-15-2004
CAS Term Reason	102	- Unauthorized or	07-13-2004
CAS Employ Type	4	- All Benefits	07-29-2002
CAS Job Code	070980	- SPECIALIZED SUP	07-29-2002
CAS Pay Group	029	- Semimonthly Sal	07-29-2002
CAS Benefits Pd	999	- None	07-29-2002
CASTransitionner	N	- NotTransitionner	01-01-1900
CAS US Citizen	1	- U.S. Citizen	07-09-2002
CAS Inpat Ind	N	- Not Inpat	07-29-2002
Control Group	USCASO	- US EDS	07-29-2002

Show history